

No. 12,516

IN THE

United States Court of Appeals
For the Ninth Circuit

FOON GOON MOK,

vs.

UNITED STATES OF AMERICA,

Appellant,

Appellee.

APPELLANT'S PETITION FOR A REHEARING.

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FILED

FEB 28 1951

PAUL P. O'BRIEN,

CLERK

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*To the Honorable William Denman, Chief Judge, and
to the Honorable Associate Judges of the United
States Court of Appeals for the Ninth Circuit:*

The petition of Foon Goon Mok, appellant herein, respectfully represents:

That this is the first case before the above-entitled court where the provisions of Section 324(a) of the Nationality Act of 1940 as amended (8 U.S.C. 724 (A)) could be interpreted whereby counsel and the lower court might have certain criteria or bases upon which future petitions for naturalization might be decided.

As pointed out in the brief for appellant (page 12) no residence requirement is required under this sec-

tion, nor is there any prescribed period of time during which good moral character must be shown as a prerequisite to naturalization.

Nonetheless this court, in its opinion, states "The record contains an abundance of evidence from which such finding could be made", namely, that the petitioner "has failed to establish his good moral character for the required period of time".

What is that required period of time? Both the appellant and the appellee are in agreement that there are no reported cases on this exact point. The opinion of this court does not clarify this point, nor is it a guide for future cases.

Moreover, the opinion of this court conflicts with the case of *Do Quay Lew* (Appellee's Brief, p. 18) where citizenship was granted when the petitioner had falsely claimed United States citizenship six months prior to the filing of the petition. *Do Quay Lew* filed his petition under the same section as appellant.

At the time of the oral argument, one of the justices raised the point that the appellant had been guilty of making a false claim to citizenship six months prior to the time that appellant had filed his petition, and the justice intimated that that of itself showed bad moral character.

Appellant respectfully calls the attention of this court to his brief commencing on page 9 and ending on page 12, wherein he quotes a Board of Immigration Appeals decision which concludes "with each succeeding false claim being uttered merely to conceal previous statements respondent may be regarded as being

guilty in fact of but one such lapse, for which he has made amends."

This court remarked in *Jim Yuen Jung, Appellant v. Bruce G. Barber, Appellee* (No. 12,455) as follows:

"If it can be said that he claimed a false birthplace to gain admission to the army, that would not appear to be much different than claiming a false age in order to enter the army, a thing for which many have been highly praised."

This court held, in its opinion in the instant case, that the finding that petitioner "has failed to establish his good moral character for the required period of time" is not susceptible to the construction that it refers to petitioner's character at some period in the past. Appellant respectfully urges to the court that the finding is as confusing and ambiguous as the finding in the *Jim Yuen Jung* (supra) case, which this court reversed on October 4, 1950.

What is the required period of time? The designated Examiner (Appellant's Brief, p. 15) stated that the petitioner must show a good moral character *from the time of the filing of the petition to the date of the hearing*. The supervisor of Citizenship Certificate Unit of the Office of Adjudication, Immigration and Naturalization Service (Appellant's Brief, p. 14) wrote that the applicant need prove good moral character only for the required period of residence. In the Monthly Review of the Immigration and Naturalization Service an article appeared (Appellant's Brief, p. 14) that the appellant need only establish that he has been a person of good moral character during the abbreviated period of residence applicable to his class.

Appellant is not required to have any period of residence and comes within the purview of the bill, the purpose of which is to reward aliens who have honorably served in the armed forces by permitting them to acquire citizenship through naturalization without the necessity of going through certain processes required of non-service people.

Appellant respectfully submits that a rehearing be granted for the purpose of clarifying the law concerning the period prior to the filing of the citizenship application which the court has a right to consider in determining his good moral character.

Dated, San Francisco, California,
February 28, 1951.

KENNETH C. ZWERIN,
*Attorney for Appellant
and Petitioner.*

CERTIFICATE OF COUNSEL

Kenneth C. Zwerin, counsel for appellant herein, does hereby certify that in his judgment the petition for rehearing is well founded and that the same is not interposed for delay.

Dated, San Francisco, California,
February 28, 1951.

KENNETH C. ZWERIN,
*Counsel for Appellant
and Petitioner.*

